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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/909,288	07/19/2001	Peter Robert Foley	CM2506	2173

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EXAMINER
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DELCOTTO, GREGORY R

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 11/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/909,288

Applicant(s)

FOLEY ET AL

Examiner

Gregory R. Del Cotto

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 30-35, 57, 58, 60 and 62-65 is/are pending in the application.
- 4a) Of the above claim(s) 30-35 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 57, 58, 60 and 62-65 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. Claims 30-35, 57, 58, 60 and 62-65 are pending. Claims 30-35 have been withdrawn from consideration as being drawn to a non-elected invention. Note that, Applicants arguments and amendments filed 8/15/05 have been entered.

### **Objections/Rejections Withdrawn**

The following objections/rejections as set forth in the Office action mailed 5/26/05 have been withdrawn:

The objection to claims 38-40, and 42-66 because of minor informalities has been withdrawn.

The rejection of claim 56 under 35 U.S.C. 103(a) as being unpatentable Feng (US 5,929,007) in view Culshaw et al (US 5,202,050) and JP 8151597, and further in view of Ofosu-Asante (US 5,739,092) has been withdrawn.

### ***Priority***

Acknowledgment is made of applicant's claim for foreign priority based on applications filed in the United States on 7/19/00, 7/25/00, and 12/21/00. It is noted, however, that applicant has not filed a certified copy of the 00/19619, 00/20255, 00/34906, and 00/34907 application as required by 35 U.S.C. 119(b).

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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Claims 57, 58, 60, and 62-65 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With respect to instant claim 1, it is vague and indefinite in that it is unclear what is meant by "smectite-type clay". Note that, the specification provides no guidelines or definition as to what is meant by "smectite-type" and it would not be clear to one of ordinary skill in the art as to what compounds fall within and outside the scope of the terminology "smectite-type." Further, the addition of the word "type" to an otherwise definite expression extends the scope of the expression so as to render it indefinite. *Ex parte Copenhaver*, 109 USPQ 118 (Bd. App. 1955). See MPEP 2173.05(c). Clarification is required. Note that, claims 58, 60, and 62-65 have also been rejected due to their dependency on claim 57.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent,

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except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

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1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 57, 58, 60, and 62-65 are rejected under 35 U.S.C. 103(a) as obvious over Feng (US 5,929,007) or JP 60-141,800, both in view Culshaw et al (US 5,202,050) and JP 8151597.

Feng teaches alkaline aqueous hard surface cleaning compositions which exhibit good cleaning efficacy against hardened dried or baked on greasy soil deposits. The compositions comprise 0.01 to 0.85% by weight of amine oxide, 0 to 1.5% by weight of chelating agent, 0.01% to 2.5% by weight of caustic, 3% to 9% by weight of glycol ether solvent system comprising one glycol ether or glycol ether acetate solvent having a solubility in water of not more than 20% by weight water and a second glycol ether or glycol ether acetate having a solubility of approximately 100% by weight wherein the ratio of the former to the latter is from 0.5:1 to 1.5:1, 0 to 5% by weight of a water-

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soluble amine containing organic compound, 0 to 2.5% by weight of a soil anti-redeposition agent, and 0 to 2.5% of optional constituents. See Abstract. The caustic agent is present in the compositions to ensure that the overall pH of the compositions is at least 11.5 or greater. Suitable solvents which exhibit a solubility in water of approximately 100% by weight include diethylene glycol n-butyl ether. See column 4, lines 20-65. The compositions preferably include a soil antiredeposition agents which may be synthetic hectorite, colloidal silica, etc. See column 5, lines 50-69. Another desirable additive is a thickening agent such as those based on alginates and gums including xanthan gum. See column 6, lines 5-40. The hard surface-cleaner composition provided can be desirably provided as a ready to use product in a manually operated spray dispensing container. Such a typical container is generally made of synthetic polymer plastic material such as polyethylene, polypropylene, polyvinyl chloride, and includes spray nozzle, a dip tube, and associated pump dispensing parts and is thus ideally suited for use in a consumer spray-and-wipe application.

Specifically, Feng teaches 2.0% amine oxide, 0.5% EDTA salt, 0.8% NaOH, 3.0% monoethanolamine, 3.0% glycol ether, low water soluble, 3.7 glycol ether, high water soluble, the balance water. See column 9, lines 35-50. The low water soluble glycol ether is propylene glycol n-butyl, the high water soluble glycol ether is dipropylene glycol methyl ether, etc.

'800 teaches a liquid detergent composition containing 0.1 to 10% by weight of a swellable clay mineral, 0.1 to 30% of a solvent, 1 to 20% of a surfactant and 0.5 to 30% of an alkali agent. Suitable solvents include diethylene glycol monobutyl ether, etc.

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See page 4, lines 10-50. Note that, amine oxide surfactants and monoethanolamine may also be used in the compositions. See page 9, lines 1-30. Suitable additional ingredients include fragrances, dyes, etc. See page 6, lines 1-15. These compositions are used for removing soils from ovens, glass, refrigerators, and other kitchen items. See page 3, lines 1-10. The product of the invention may be used as-is, and an aerosol or spray-type product is also appropriate from the standpoint of ease of use. See page 6, lines 1-10.

Feng or '800 do not specifically teach a smectite clay having a particle size of less than 100 nm nor a cleaning composition having the specific physical parameters containing a solvent, a smectite clay with a particle size of less than 100 nm, xanthan gum, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

Culshaw et al teach safe and effective hard-surface cleaning compositions which contain a binary mixture of an organic solvent and a narrowly defined chelating agent. See Abstract. Suitable organic solvents include benzyl alcohol, 2-(2-butoxyethoxy)ethanol, 1-(2-n-butoxy-1-methylethoxy)propane-2-ol, etc., and can be used in amounts of from 1% to 20%. See column 5, lines 1-30. In addition to the essential chelating agent/solvent binary mixture, the compositions can contain additional ingredients such as surfactants and suitable surfactants include anionic, nonionic, cationic, amphoteric, and zwitterionic surfactants. See column 5, lines 45-69. Also, thickeners may be used in the compositions in amounts from 0.2% to 1.5% and include xanthan gums, smectite clays, etc. See column 6, lines 55-69. Highly desirable



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ingredients for use include hydrotropes such as monoethanolamine, diethanolamine, triethanolamine, etc. See column 6, lines 15-35. The pH of such compositions will generally be in the range of from 5 to 11. See column 7, lines 50-60.

Culshaw et al do not specifically teach a particle size of less than 100 nm for the smectite clay.

'597 teaches liquid detergent compositions containing a clay mineral having an average particle size of 10 to 5000 nm and anionic and nonionic surfactants. These minerals include montmorillonite, saponite, smectite and swelling mica. See Abstract.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use a smectite clay having a particle size of less than 100 nm in the cleaning composition taught by Culshaw et al, with a reasonable expectation of success, because '597 teaches the use of smectite clay having a particle size of less than 100 nm in a similar detergent composition and Culshaw et al teaches the use of smectite clays in general.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use a smectite clay having a particle size less than 100 nm in the cleaning composition taught by Feng, with a reasonable expectation of success, because Culshaw et al in combination with '597 teaches the use of smectite clays having a particle size of less than 100 nm and their equivalence to xanthan gum in a similar cleaning composition and further, Feng teaches the use of thickening agents such as xanthan gum.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use a smectite clay having a particle size less than 100 nm and xanthan gum in the cleaning composition taught by '800, with a reasonable expectation of success, because Culshaw et al in combination with '597 teaches the use of smectite clays having a particle size of less than 100 nm and their equivalence to xanthan gum in a similar cleaning composition and further, '800 teaches the use of thickening agents such as swellable clay minerals including smectite-type clay minerals.

With respect to the flow viscosity, shear thinning properties, pH, and other physical parameters as recited by the instant claims, the Examiner asserts that the broad teachings of Feng '800 in combination with Culshaw et al and '597 would encompass compositions having the same the flow viscosity, shear thinning properties, pH, and other physical parameters as recited by the instant claims because Feng or '800, both in combination with Culshaw et al and '597 suggest compositions containing the same components in the same proportions as recited by the instant claims.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a detergent composition used in a spray dispenser having the specific physical parameters containing a solvent, a smectite clay having a particle size of less than 100 nm, a xanthan gum, and the other requisite components of the composition in the specific proportions as recited by the instant claims, with a reasonable expectation of success and similar results with respect to other disclosed components, because the broad teachings of Feng or '800, both in combination with Culshaw et al and '597 suggest a detergent composition used in a spray dispenser

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having the specific physical parameters containing a soil swelling agent, a smectite clay having a particle size of less than 100 nm, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 57, 58, 60, and 62-65 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-37 of copending Application No. 11/151027 in view of Feng et al (US 5,929,007).

Claims 1-37 of 11/151027 encompass all of the material limitations of the instant claims except for the inclusion of a spray dispenser.

Feng et al are relied upon as set forth above.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use a spray dispenser with the cleaning composition as recited by the instant claims 1-37 of 11/151,027, with a reasonable expectation of success,

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because Feng et al teach a similar hard surface cleaning composition which is dispensed from a spray dispenser and further, hard surface cleaning compositions are conventionally dispensed from a spray dispenser.

This is a provisional obviousness-type double patenting rejection.

### ***Response to Arguments***

With respect to Feng et al and JP '597, Applicant states that there is no motivation to use smectite clay thickeners in the composition taught by Feng et al because '597 teaches that clay thickeners are used instead of gum thickeners. In response, note that, Culshaw et al teaches the equivalence of clay thickeners to gum thickeners in a similar composition as set forth above; JP '597 is a secondary reference relied upon for its teaching of particle size and not the equivalence of clays to gums or for gum thickeners in general. Note that, it is well settled that where the prior art teaches the equivalence two compounds for the same purpose, it is obvious to use a mixture of the compounds for the same purpose. See MPEP 2144.06.

The Examiner maintains that there is clear motivation to one of ordinary skill in the to use smectite clay of a particular particle size in the composition taught by Feng et al, with a reasonable expectation of success, because Culshaw in view of JP '597 teaches the equivalence of smectite clay of a particular particle to xanthan gum in a similar cleaning composition and further, Feng teaches the use of xanthan gum.

### ***Conclusion***

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2. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Remaining references cited but not relied upon are considered to be cumulative to or less pertinent than those relied upon or discussed above.

Applicant is reminded that any evidence to be presented in accordance with 37 CFR 1.131 or 1.132 should be submitted before final rejection in order to be considered timely.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory R. Del Cotto whose telephone number is (571) 272-1312. The examiner can normally be reached on Mon. thru Fri. from 8:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Gregory R. Del Cotto

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Primary Examiner  
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GRD  
October 30, 2005